

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE ENROLLED ACT No. 1738

AN ACT to amend the Indiana Code concerning alcoholic beverages and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 7.1-1-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. ~~General Purposes.~~ The **following are the** general purposes of this title: ~~are:~~

- ~~(a)~~ **(1)** To protect the economic welfare, health, peace, and morals of the people of this state.
- ~~(b)~~ **(2)** To regulate and limit the manufacture, sale, possession, and use of alcohol and alcoholic beverages. ~~and,~~
- ~~(c)~~ **(3)** To regulate the sale, possession, and distribution of tobacco products.
- (4)** To provide for the raising of revenue.

SECTION 2. IC 7.1-1-2-2, AS AMENDED BY P.L.213-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. Except as provided in IC 7.1-5-1-3 and IC 7.1-5-1-6, this title applies to the **following**:

- (1)** The commercial manufacturing, bottling, selling, bartering, importing, transporting, delivering, furnishing, or possessing of alcohol, alcoholic beverages, industrial alcohol, malt, malt syrup, malt extract, liquid malt or wort.

- (2)** The sale, possession, and distribution of tobacco products.

SECTION 3. IC 7.1-1-3-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8.5. "Certificate" means a tobacco sales certificate for purposes of IC 7.1-3-18.5.

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SECTION 4. IC 7.1-1-3-47.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 47.5. "Tobacco product" has the meaning set forth in IC 7.1-6-1-3.**

SECTION 5. IC 7.1-2-3-33, AS ADDED BY P.L.177-1999, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 33. The commission is authorized to:

- (1) investigate a violation of; and
- (2) enforce a penalty for a violation of;

IC 35-46-1-10, IC 35-46-1-10.2, ~~IC 35-46-1-11.3~~, IC 35-46-1-11.5, or IC 35-46-1-11.7.

SECTION 6. IC 7.1-2-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. Prosecutor: Powers and Duties. The prosecutor shall have the following powers and duties:

(a) To prosecute before the commission all violations of laws pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco, including violations pertaining to tobacco vending machines;**

(b) To prosecute before the commission all violations of the rules and regulations of the commission;

(c) To assist the prosecuting attorneys of the various judicial circuits in the investigation and prosecution of violations of laws pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco, including violations pertaining to tobacco vending machines,** and to represent the state in these matters;

(d) To appear before grand juries to assist in their investigations into matters pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco, including matters pertaining to tobacco vending machines;**

(e) To establish a seal of his office;

(f) To administer oaths and to do all other acts authorized by law for notaries public; and,

(g) To employ, with the consent of the commission and at salaries fixed by the commission in their budget, the clerical staff required by him to effectively discharge his duties.

SECTION 7. IC 7.1-3-1-3, AS AMENDED BY P.L.205-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) A permit of any type issued by the commission, except as provided in subsections (b) and (f) or unless otherwise provided in this title, shall be in force for one (1) calendar year only, including the day upon which it is granted. At the end of the one (1) year period the permit shall be fully expired and null and void.

(b) Notwithstanding subsection (a), in a county containing a consolidated city, a permit that is subject to section 5.5 or 5.6 of this

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chapter is effective for two (2) calendar years, including the day upon which the permit is granted. However, a local board may recommend to the commission that the permit be issued or renewed for only a one (1) year period. The commission may issue or renew a permit for the period recommended by the local board.

(c) A permittee who is granted a two (2) year permit under subsection (b) or subsection (f) is liable for any annual fees assessed by the commission. The annual fee is due on the annual anniversary date upon which the permit was granted.

(d) If the commission grants a two (2) year permit, the commission may ask a local board to hold a hearing to reconsider the duration of a permittee's permit. A hearing held under this subsection is subject to section 5.5 or 5.6 of this chapter. A local board shall hold the hearing requested by the commission within thirty (30) days before the permittee's next annual anniversary date and forward a recommendation to the commission following the hearing.

(e) If a permittee is granted a permit for more than one (1) year, the commission may require the permittee to file annually with the commission the information required for an annual permit renewal.

(f) Notwithstanding subsection (a), the following are effective for two (2) calendar years, including the day upon which the permit is granted:

(1) A beer wholesaler's permit issued under IC 7.1-3-3-1.

(2) A wine wholesaler's permit issued under IC 7.1-3-13-1.

(3) A liquor wholesaler's permit issued under IC 7.1-3-8-1.

SECTION 8. IC 7.1-3-1-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3.5. A permittee to whom a retailer or dealer permit has been issued under this title, may deposit that permit with the commission for a period of one (1) year if the permittee is unable to immediately operate the business to which the permit applies. The commission may extend the term of the deposit for ~~an~~ **not more than four (4)** additional one (1) year ~~period periods~~ if the permittee is able to show to the satisfaction of the commission that the permittee is making a good faith effort to put the permit into operation.

SECTION 9. IC 7.1-3-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. ~~Reasons for Permit.~~ The commission may issue a temporary beer permit only to:

~~(a)~~ **(1)** enable a fair, athletic event, barbecue, picnic, **wedding reception**, convention, exhibition, spectacle or contest to be publicly held and carried on; or

~~(b) Accommodate~~ **(2)** accommodate the institutional activities of an

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association, society, charitable or benevolent organization, or a branch of one (1) of these, or both.

SECTION 10. IC 7.1-3-17.5-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 6. Notwithstanding IC 7.1-5-5-7, the holder of an excursion and adjacent landsite permit may, subject to the approval of the commission, provide alcoholic beverages to guests without charge at an event on the licensed premises if all the following requirements are met:**

- (1) The event is attended by not more than five hundred (500) guests.**
- (2) The event is not more than three (3) hours in duration.**
- (3) Each alcoholic beverage dispensed to a guest:**
 - (A) is entered into a cash register that records and itemizes on the cash register tape each alcoholic beverage dispensed; and**
 - (B) is entered into a cash register as a sale and at the same price that is charged to the general public.**
- (4) At the conclusion of the event, all alcoholic beverages recorded on the cash register tape are paid by the holder of the excursion and adjacent landsite permit.**
- (5) All records of the alcoholic beverage sales, including the cash register tape, shall be maintained by the holder of the excursion and adjacent landsite permit for not less than two (2) years.**
- (6) The holder of the excursion and adjacent landsite permit complies with the rules of the commission.**

SECTION 11. IC 7.1-3-18.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 18.5. Tobacco Sales Certificate

Sec. 1. (a) A person may not sell or otherwise distribute in exchange for consideration a tobacco product at retail without a valid tobacco sales certificate issued by the commission.

(b) A certificate may be issued only to a person who owns or operates at least one (1) of the following:

- (1) A premises consisting of a permanent building or structure where the tobacco product is sold or distributed.**
- (2) A premises upon which a cigarette vending machine (as defined by IC 35-43-4-7) is located.**

Sec. 2. (a) A person who desires a certificate must provide the following to the commission:



(1) The applicant's name and mailing address and the address of the premises for which the certificate is being issued.

(2) A fee of fifty dollars (\$50).

(b) A separate certificate is required for each location where the tobacco products are sold or distributed.

(c) The fees collected under this section shall be deposited in the enforcement and administration fund under IC 7.1-4-10.

Sec. 3. (a) A certificate issued by the commission under this chapter must contain the following information:

(1) The certificate number.

(2) The certificate holder's name.

(3) The permanent location of the business or vending machine for which the certificate is issued.

(4) The expiration date of the certificate.

(b) A certificate is:

(1) valid for one (1) year after the date of issuance, unless the commission suspends the certificate; and

(2) nontransferable.

Sec. 4. The commission may adopt rules under IC 4-22-2 to establish procedures for the issuance, renewal, and reinstatement of a certificate.

Sec. 5. (a) Subject to subsection (b), the commission may suspend the certificate of a person who fails to pay a civil penalty imposed for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7.

(b) Before enforcing the imposition of a civil penalty or suspending a certificate under this chapter, the commission shall provide written notice of the alleged violation to the certificate holder and conduct a hearing. The commission shall provide written notice of the civil penalty or suspension to the certificate holder.

Sec. 6. (a) If a certificate has:

(1) expired; or

(2) been suspended;

the commission may not reinstate or renew the certificate until all civil penalties imposed against the certificate holder for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7 have been paid.

(b) The failure to pay a civil penalty described in subsection (a) is a Class B infraction.

(c) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the youth tobacco education

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and enforcement fund established under IC 7.1-6-2-6.

Sec. 7. (a) A person who is required to have a certificate under this chapter and who sells or distributes tobacco products without a valid certificate commits a Class A infraction. Each violation of this section constitutes a separate offense.

(b) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

SECTION 12. IC 7.1-3-23-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16. ~~Revocation upon Conviction.~~ The commission may revoke a wholesaler's, retailer's, or dealer's permit of any type after final judgment of conviction for an offense defined in this title. The commission ~~shall~~ **may** revoke the permit of a wholesaler, retailer, or dealer upon a second violation of a provision of this title whether a judgment of conviction ensues or not.

SECTION 13. IC 7.1-4-4.1-2, AS ADDED BY P.L.204-2001, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. The fee for a supplemental caterer's permit is **five one hundred fifty** dollars ~~(\$5)~~ **(\$150)** per ~~event~~ **year**.

SECTION 14. IC 7.1-4-4.1-3, AS ADDED BY P.L.204-2001, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. The following biennial license fee is imposed for an employee's permit:

- (1) Five dollars (\$5) if the permit is used only to perform volunteer service that benefits a nonprofit organization.
- (2) ~~Twenty~~ **Thirty** dollars ~~(\$20)~~ **(\$30)** if subdivision (1) does not apply.

The term of a biennial employee's license is two (2) years.

SECTION 15. IC 7.1-4-4.1-18 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 18. The fee for a duplicate or reissued permit of any type is ten dollars (\$10). The fees collected under this section shall be deposited in the enforcement and administration fund under IC 7.1-4-10.**

SECTION 16. IC 7.1-5-5-7, AS AMENDED BY P.L.204-2001, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) It is unlawful for a permittee in a sale or contract to sell alcoholic beverages to discriminate between purchasers by granting a price, discount, allowance, or service charge which is not available to all purchasers at the same time. However, this section does not authorize or require a permittee to sell to a person to whom he is not authorized to sell under this title.

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(b) A premises that operates at least two (2) restaurants that are separate and distinct from each other on the same premises may provide for a different schedule of prices in each restaurant if each restaurant conforms to all other laws and rules of the commission regarding pricing and price discrimination in its separate and distinct areas.

(c) This section does not apply to the holder of an excursion and adjacent landsite permit that complies with IC 7.1-3-17.5-6.

SECTION 17. IC 35-46-1-10.2, AS AMENDED BY P.L.1-2001, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

- (1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).
- (2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).
- (3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).
- (4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours for each specific business location.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

- (1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph showing that the purchaser

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or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund (IC 7.1-6-2-6).

(h) A person who violates subsection (a) at least six (6) times in any six (6) month period commits habitual illegal sale of tobacco, a Class B infraction.

SECTION 18. IC 7.1-3-23-15 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 19. IC 35-46-1-11.3 IS REPEALED [EFFECTIVE JULY 1, 2003].

SECTION 20. **An emergency is declared for this act.**

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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